

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1022 OF 2005

Shri Shanaishwar Foundation)
Mumbai, through its Trustee,)
Dr. Shyam Shinde, 20-A,)
147/151, Shinde Building,)
Sane Guruji Marg, Mumbai)
-400 011.) ...Petitioner.

Versus

1. Maharashtra Housing and)
Area Development Authority,)
having its office at)
Grihanirman Bhavan,)
Bandra (E), Mumbai-400051.)
2. The State of Maharashtra,)
Addl. Govt. Pleader,)
High Court, OOCJ, Mumbai-32.)
3. Gurugobindsing Vidhayak)
Sanstha, Shri Shaneshwar)
Mandir Path, Tagorenagar,)
Group No.6, Vikhroli (East),)
Mumbai-400 083.) ...Respondents.

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Mr. A. Y. Sakhare i/b. Varsha Palav & Aradjaue.
Advocate for the Petitioner.
Mr. R. M. Sawant, Govt. Pleader, for Respondent.
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CORAM : F. I. REBELLO AND
SMT. V. K. TAHILRAMANI, JJ.

DATE OF RESERVING
THE ORDER : JULY 11, 2006.

DATE OF PRONOUNCING
THE ORDER : JULY 17, 2006.

ORAL ORDER (PER SMT. V. K. TAHILRAMANI, J.)

1. The petitioner, a registered public trust under the Bombay Public Trusts Act, 1950, seeks to

invoke the extraordinary powers of this Court under Article 226 of the Constitution of India, for directions against Respondent Nos.1 & 2 to cancel the allotment of plots of land bearing C.T.S.No.292 Kurla Hariali, Kanjur, Taluka Kurla, within the corporation limits of Mumbai and to allot the said plot to the petitioner in response to its representation dated 17.2.1997.

2. Admittedly, MHADA developed a Housing Colony known as Tagore Nagar, Vikhroli (East), Mumbai, as a consequence of a Slum Clearance Scheme in year 1969 or thereabout. The plot of land in Survey No.292 Part, out of Survey No.113 of village Hariyalli was a creek land and was lying undeveloped. This plot was levelled by Respondent No.3, which is also a public trust and Respondent No.3 constructed a Gurudwara thereon as a large number of Punjabi families i.e. about 600 families came to reside in Tagore Nagar from Raoli camp, Sion, Koliwada etc. In addition, Respondent No.3 had also started an English medium school on the said plot. The construction of Gurudwara as well as running English medium school were by way of encroachment on the said plot which was reserved. Respondent No.3 had approached the

State Government vide its letter dated 26.6.1983 with a request to allot the said plots to it and it continued approaching the State Government till the year, 1999. Finally the Government forwarded the representation of Respondent No.3 to Respondent No.1 which in turn passed a resolution on 24.4.2001 so as to regularise the construction in the form of Gurudwara on plot admeasuring 2347.31 square meters. As Respondent No.3 was also running an English medium school catering to the need of the residents of the said Tagore Nagar, a plot admeasuring 7411.10 square meters from the said Survey number came to be allotted by MHADA to Respondent No.3 under Rule 9 of the Maharashtra Housing and Area Development (Disposal of Land) Rules, 1981 as per allotment letter dated 13.12.2001.

3. The petitioner claims that it had approached the State Government under Rule 16 of the MHAD (Disposal of Land) Regulations, 1982, vide its representation dated 17.2.1997. The petitioner alleges that while its representation was pending, surreptitiously the land came to be allotted to Respondent No.3 in breach of MHAD (Disposal of Land) Regulations, 1982.

4. As per the petitioner there were several applicants requesting for allotment of the said land in their favour and Respondent Nos.1 & 2 in arbitrary exercise of their powers allotted the land to Respondent No.3 and thus violated the mandate of Article 14 of the Constitution of India. The petitioner, therefore, states that the allotment made in favour of Respondent No.3 is illegal and required to be struck down. Rule 16 of the MHAD (Disposal of Land) Regulations, 1982 provides for disposal of the reserved plots for amenities or for purely commercial purposes in any layout prepared by the Authority in accordance with the directions of the State Government

5. As noted earlier, a plot admeasuring 2347.31 square meters was already in occupation of the Gurudwara. Taking this aspect into consideration and the needs of the local residents, MHADA decided to regularise the said plot in favour of Respondent No.3 for a consideration of Rs.1,16,21,219/-. So far as the other plot is concerned, the allotment has been made under Rule 9 of the Maharashtra Housing and Area Development (Disposal of Land) Rules, 1981

for a consideration of Rs.1,49,06,222/- . Rule 9 of the Maharashtra Housing and Area Development (Disposal of Land) Rules, 1981 reads as under :-

"9. Disposal of land for religious purposes :

. No vacant land shall be leased by the Authority for a religious purpose except with the previous sanction of the State Government."

. The petitioner has relied upon the Regulations of the Maharashtra Housing and Area Development (Disposal of Land) Regulations, 1982. A combined reading of Regulations 3 & 5 of the MHAD (Disposal of Land) Regulations, 1982 shows that the plots reserved for the purposes other than residential in an approved layout, may be disposed of by the Authority by making offers to or accepting offers from a public charitable trust, or a registered society. Therefore, the allotment made in favour of Respondent No.3 pursuant to resolution passed on 24.4.2000 and allotted by letter dated 13.12.2001, does not appear to be in breach of the MHAD (Disposal of Land) Regulations, 1982. It has been pointed out from the affidavit filed on behalf of the State Government that Respondent No.3 was already

running an English medium school. On the other hand, the petitioners are not running any educational institution and instead claim to be running a health centre, judo & karate training centre etc.. On behalf of the Petitioners it is stated that it wanted to construct building for educational activities to impart education in printing technology, which it had proposed to start. If the Respondent Authority has preferred an institution which is running a school against an institution which proposed to start educational institution, that cannot be said to be an arbitrary exercise of powers. It is also pertinent to note that allotment made to the school run by Respondent No.3 vide letter dated 13.12.2001 has been challenged by this Petition filed on or about 18.11.2004 i.e. after about three years.

6. In the premises, we do not see any reason to entertain this Petition, more so, when the petitioner has no right for allotment of the land in its favour. Hence, the Petition is rejected summarily. No order as to costs.

[F.I.REBELLO, J.]

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[SMT.V.K.TAHILRAMANI, J.]